

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Cinemas-Nalgonda District - Appeal filed by Sri A.Veera Reddy, M/s Raghava Theatre, Miryalaguda, Nalgonda District, against the proceedings of the Joint Collector and Licensing Authority, Nalgonda District- -Appeal allowed—Orders-Issued.

HOME (GENERAL.A) DEPARTMENT

G.O.Ms.No: 200

Dated: 28-03-2009.

Read the following:

1. Appeal petition dated 13.11.2002, received from Sri A.Veera Reddy, M/s. Raghava Theatre, Miryalaguda, Nalgonda District.
2. From the High Court of A.P., Hyderabad, in W.P.No.454, of 2003, filed by Sri A. Veera Reddy, M/s. Raghava Theatre, Miryalaguda, Nalgonda District, dated 25.6.2008.
3. Govt. Memo No.2696/Genl.A1/2003-5, dated 25.8.2008.
4. From the District Collector, Nalgonda, Lr.No.H7/1656/2003, dated 12/12/2008.
5. Concurrence of C.E.O & E.O. Principal Secretary, General Administration (Elections) Department, dated 16.03.2009.

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ORDER:-

In the reference 1st read above, Sri A.Veera Reddy, M/s. Raghava Theatre, Miryalaguda, Nalgonda District, has filed an appeal petition before the Appellant Authority against the orders of the Joint Collector and Licensing Authority, Nalgonda District, for transfer of Form-B Licence in respect of Shakuntala Picture Palace, Miryalaguda, Nalgonda District.

2. Keeping in view of the orders of the Hon'ble High Court, Hyderabad, in the reference 2rd read above, Government have called for the detailed report along with relevant records from the District Collector & Licensing Authority, Nalgonda District. The District Collector & Licensing Authority, Nalgonda District, in the reference 4th read above, has furnished report and records to Government.

3. The report of the Revenue Divisional Officer Miryalaguda, furnished by the District Collector, Nalgonda, reveals that Sri A.Veera Reddy has submitted a petition before the Joint Collector and Licensing Authority, Nalgonda, for transfer of Form-B licences of M/s. Shakuntala and M/s. Raghava Theatres in his favour, with required fee for the period from 1-1-2004 to 31-12-2005, and also subsequent periods. Smt. A. Amruthamma, alias Amrutha Devi wife of Late Raghava Reddy, has filed an objection not to renew the licence, and stated that her husband has executed a Will Deed which is registered when he was alive. M/s Shakuntala Picture palace, and (8) shops were written in her favour.

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4. The Joint Collector and Licensing Authority, Nalgonda, has issued orders vide C1/4303/02, dated 30-7-2002, transferring Form-B Licence pertaining to M/s. Shakuntala Picture Palace, Miryalaguda, in favour of Smt.A.Amruthamma, alias Amrutha Devi, wife of Late Raghava Reddy, while transferring the Licence in respect of M/s. Raghava Theatre, Miryalaguda, in favour of Sri A.Veera Reddy, S/o Late Raghava Reddy, as per the will executed by Late Raghava Reddy, as per rule 5 (2) (b) of A.P. Cinemas (Regulation) Rules, 1970, in Procs.No.C1/4303/02, dated 30-7-2002.

5. The Revenue Divisional Officer, Miryalaguda, Nalgonda District, further reported that inspite of the above orders passed by the Joint Collector, Nalgonda, Sri Veera Reddy was in possession of M/s. Shakuntala Picture Palace, Miryalaguda, Nalgonda District.

6. An opportunity of hearing was given to both Appellant and Respondent to hear the case in person. The case was heard before the Appellate Authority on 29-1-2009, and on 17-2-2009, both the Appellant and Respondents have submitted their Written Arguments.

7. The Respondent (i.e. Smt. Amruthamma) has contended that the petitioner has not given any cogent reasons to condone the delay of 32 days in filing the revision, the Appellate Authority has no jurisdiction to entertain the merits of the revision as the revision is filed beyond the period prescribed by the statute. The allegations mentioned in the affidavit are all false and incorrect, hence denied, as the petitioner was hale and healthy and the petitioner was attending to day to day affairs and the petitioner has not approached with clean hands as the petitioner has forged the signature of her late husband and is claiming on the basis of forged and fabricated documents. The Partnership Deed alleged to be dated 1-4-2001, is a forged one. The petitioner has approached the Joint Collector, Nalgonda, with a representation dated 5-7-2002, claiming that the father of the Petitioner and the Petitioner were two partners in the firm and in view of the death of the father of the Petitioner the firm stood dissolved, as there were only two partners and under section 31 of the Indian Partnership Act, the surviving partner becomes a sole partner. It is submitted that under Section 42 (c) of the Indian Partnership Act, the firm if any stands dissolved in view of the death of any partner the same view has been upheld by the Hon'ble Apex Court in AIR 1966 AX 24 and confirmed by the Hon'ble High Court of Andhra Pradesh in 2002(3) ALD 406 in respect of Anand Cinema. Hence, the allegation that there was partnership and that the wife of the Petitioner is also a partner is prima facie false on the face of record, as if such partnership deed was in existence as on 5-7-2002, the same would have been filed by the Petitioner before the Joint Collector, Nalgonda. In fact in view of the admission of the Petitioner that the firm stood dissolved, it is for the Petitioner to approach the Civil Court for rendition of accounts and other reliefs, and the remedy is not before the authorities and the fact remain that the husband of the Respondent (i.e. Smt. Amruthamma) herein was exclusively running the theatre and entitled for the theatre. As such, the
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Joint Collector rightly transferred the licence in the name of the Respondent herein as per rules. The fact remains that partnership deed alleged to be dated 1-4-2001, was not produced before the Joint Collector at any time, as it was not in existence. Hence, the Counsel for the Respondent (i.e. Smt.A. Amruthamma @ Amrutha Devi) requested that application filed by the Petitioner be rejected as delay is not properly explained.

8. The Appellant (i.e. Sri A.Veera Reddy) has stated that the appellant is the partner of Shakuntala Picture Palace and Raghava Picture Palace and also 16 mulgies at Raghava Picture Palace situated at Miryalaguda town, Nalgonda District, by virtue of the partnership deed executed on 1-4-2001, and Appellant is the 2nd partner with 35% share. The appellant made an application to the Joint Collector, Nalgonda District, in the capacity of managing partner of the firm for transferring the licence of the theaters on the partnership firm for transferring the B Form Licence of the theaters on the partnership firm. Based on his application, he was called upon to submit necessary documents. There upon at the same time without any reasons the Joint Collector issued notice to the respondent no 3, who is not a partner of the firm. He further submitted that appellant received a notice on 22-6-2002, for which he gave a detailed explanation on 6-7-2002. It is also submitted that the Joint Collector, Nalgonda, issued letter to the Revenue Divisional Officer, basing on which the R.D.O. has conducted a detailed enquiry and after that a report was furnished on 18-7-2002, wherein he has clearly recommended that the representation made by the appellant deserves consideration. Without considering his explanation, factual aspects, report of the RDO, Miryalguda, the Joint Collector and Licencing Authority has transferred the B-Form Licence in favour of Smt Amruthamma @ Amrutha Devi. He further stated that it is settled principle of law that the partnership property cannot be transferred without consent of other partners nor is entitled to transfer.

9. He submitted that no authority under the A.P.Cinemas (Regulation) Act, 1970, can act upon a Will Deed, and the will submitted by the respondents is a fabricated document. The will has to be proved, and onus lies upon the person claiming so, and as per the provisions of section 68 of the Indian Evidence Act, the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. The appellant (i.e. Sri A.Veera Reddy) relied on the Judgment passed by this Hon'ble Supreme Court in 2009 (1) Supreme 339. In the said judgment, the Hon'ble Supreme Court held that " The propounder must prove execution and attestation of the will by examining at least one of the attesting witnesses". The Joint Collector should have seen that even as per the will the partnership property cannot be transferred contrary to rights and share of the deceased partner. Therefore, the Joint Collector ought to have directed the respondent (Smt. Amruthamma) to approach civil court for so called claim under the will.

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10. It is evident from the 'Will Deed' in Document No. 90 of 1998, dated 15-7-1998, that he bequeath the M/s. Shakuntala Picture Palace, situated at Miryalaguda, and the shop hearing Nos 1 to 8, abutting the sub lane with in the complex of M/s. Shakuntala Picture Palace and M/s. Raghava Theatre in favor of his wife Smt A. Amruthamma @ Amrutha Devi, and she shall enjoy the same as absolute owner and exclusive possessor and shall enjoy the income arrive out of the theatre and shops in the form of rent or in the form of the profit exclusively, and that his son shall not interfere with the enjoyment of his wife ignoring the theatres are under the control of Managing Partner of M/s. Shakunthala Picture Place.

11. It is also evident that M/s Shakunthala Picture Palace, Miryalaguda, registered as firm under Register of Firms, entered in the Registrar of firms No.3504 of 1976, registered under section 59 of Indian Partnership Act on 3-9-1976, in which Sri A.Raghava Reddy, Veera Reddy, Kancharla Jithender Reddy, Kancharla Satyanarayana Reddy, are the partners, and Partnership deed executed on 16-7-1976, in the office of the Sub Registrar, Miryalaguda. Subsequently, Sri Kancharla Jithender Reddy, and Satyanarayana Reddy, retired from the partnership with effect from 31-3-1989, vide release dated 24-10-1989, and subsequently on 1-4-2001, the other partners admitted Smt Anireddy Vasudha, W/O A. Veera Reddy, as their third partner, as per the said Partnership Deed. As such Sri A.Veera Reddy, and his wife Smt A.Vasudha, are the partners to the said theatres, after the death of Late Sri A.Raghava Reddy, who expired on 14-12-2001, and are entitled licence in their Managing Partner name with reference to rule 5 2(b) of A.P.Cinemas (Regulation) Rules, 1970, as the theatres are Partnership firm registered under partnership and the licence shall continue to given on the firm represented by Managing Partner, and Smt A. Amruthamma @ Amrutha Devi is not a partner and the licence cannot be transfer to any individual during the existing of the partnership firm and in the case of retirement of any partner the remaining nominees become the partners to the extent of the share held by the diseased/retired partner.

12. Further Smt A. Amruthamma @ Amrutha Devi has not filed any Civil Suit for implementation of the 'Will Deed' in Document No. 90 of 1998, dated 15-7-1998, after the death of Late Sri A.Raghava Reddy, who expired on 14-12-2001.

13. Government observes that the report of the Revenue Divisional Officer, Miryalalguda, reveals that Sri A.Veera Reddy has submitted a petition before the Joint Collector and Licensing Authority, Nalgonda, for transfer of Form-B Licences of M/s. Shakuntala and M/s Raghava Theatres in his favour, with required fee for the period from 1-1-2004 to 31-12-2005, and also subsequent periods, as the actual possession of the M/s Shakuntala and M/s Raghava Theatres is

with Sri A.Veera Reddy and he established his title and lawful possession over the Theatre in question to continue or renew the Cinema Licence, as required under rule 5 2(b) and rule 8-A (2)(b) of A.P. Cinemas (Regulation) Rule,1970.

14. Government after careful examination of the matter have decided to allow appeal petition filed by Sri A.Veera Reddy, and set-aside the orders of Joint Collector,& Licensing Authority, Nalgonda, issued in Procds. C1/4303/02, dated 30-7-2002, transferring the Form-B Licence of M/s. Shakuntala Picture Palace A/C, Sagar Road, Miryalaguda, in favour of Smt.Ani Reddy Amruthamma @ Amrutha Devi W/o Late A.Raghava Reddy, as per Rule 8-A 2(b) of A.P. Cinemas (Regulation) Rules, 1970, as the theatre is under the possession and enjoyment of the appellant.

15. The District Collector & Licensing Authority, Nalgonda, is directed to re-new the licence of M/s. Shankuntala Picture Palace, Miryalaguda, in favour of Sri A.Veera Reddy, S/o Late A.Raghava Reddy.

16. The Records of the District Collector and Licensing Authority Nalgonda. are returned herewith and receipt of the same may be acknowledged immediately.

17. A copy of this order is available on Internet and can be accessed at address <http://www.ap.gov.in/goir>.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

AJOYENDRA PYAL,
PRINCIPAL SECRETARY TO GOVERNMENT.

To

The District Collector & Licensing Authority, Nalgonda.
The Joint Collector, Miryalaguda, Nalgonda District.

Copy to :

Sri A.Veera Reddy,
Managing Partner of
M/s Shakuntala Picture Palace, &
M/s Raghava Theatre, Miryalaguda, Nalgonda District.

Copy to:

Smt.A.Amruthamma @ Amrutha Devi,
W/o Late A. Raghava Reddy,
R/o.Flat No.202, Himasai Apartment, Barkatpura, Hyderabad.

Copy to the P.S. to M (Cinematography).

Copy to the P.S. to Principal Secretary, Home Department.
SF/SCs.

//Forwarded:By Order//

Section Officer.